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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Implementation of Section 3(n) and 332
of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Amendment of Part 90 of the
Commissions's Rules to Facilitate
Future Development of SMR Systems in
the 800 MHz Frequency Band

PR Docket No. 93-144

Amendment of Parts 2 and 90 of the
Commissions's Rules to Provide for the
Use of 200 Channels Outside the
Designated Filing Areas in the 896-901
MHz and 935-940 MHz Band Allotted
to the Specialize Mobile Radio Pool

PR Docket No. 89-553

DOCKET FILE COPY ORIGINAL

COMMENTS

The Personal Communications Industry Association ("PCIA"),¹
pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R.
§1.429(f), herewith submits its Comments regarding the Petitions

¹The National Association of Business and Educational Radio, Inc. ("NABER") and PCIA recently announced the decision to merge their two organizations and to operate under the PCIA name as a new legal entity. Pending final legal and regulatory approvals the two organizations remain separate legal entities. This new PCIA is an international trade association created to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, NABER is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

For Reconsideration submitted by various parties in the above-captioned proceeding.

I. BACKGROUND

In its own Petition for Reconsideration, PCIA requested that the Commission act on reconsideration to:

- ▶ Permit pre-authorization operation of mobile service facilities for all CMRS systems under blanket or conditional authorizations;
- ▶ Eliminate the five-year loading rule for 900 MHz SMR Systems;
- ▶ Ensure comparable and reasonable treatment of carriers under the forfeiture schedule;
- ▶ Deem construction deadlines to be satisfied if facilities are available for service to the public;
- ▶ Permit the optional licensing of standby facilities;
- ▶ Accord paging operators additional flexibility under the emissions mask to operate adjacent channels as a wideband channel; and
- ▶ Modify the 900 MHz SMR licensing policies to permit flexibility for carriers in providing service to the public.

PCIA also requested that limited procedural changes were needed to clarify or modify certain aspects of the Third Report and Order. Specifically, PCIA requested that the Commission: (1) specify the relevant effective date for each of the Part 90 rule changes to clarify how the grandfathering provisions will be applied; (2) eliminate the requirement to supplement Form 574 filings with pages one and two of the main Form 600 until April 3, 1995, so carriers can obtain the form and familiarize themselves with its requirements; and (3) codify the renewal expectancy for all carriers.

II. OTHER PETITIONS SUPPORT PCIA'S POSITIONS

Other parties in the proceeding filed Petitions for Reconsideration which echoed PCIA's concerns. For example, the American Mobile Telecommunications Association, Inc. ("AMTA") requested that the Commission designate when specific rules apply to reclassified licensees² and clarify certain rules, such as the new station identification rule.³ In addition, AMTA also supported the 900 MHz rule changes requested by PCIA.⁴

Both AMTA and Paging Network, Inc. ("PageNet") discussed the necessity for the Commission to codify the renewal expectancy for certain CMRS licensees, a point discussed in PCIA's Petition.⁵ In addition, PageNet eloquently explains the difficulties which will result from the Commission's elimination of conditional authority for coordinated applications; another issue raised in PCIA's Petition.⁶

²AMTA Petition at 26.

³AMTA Petition at 15.

⁴AMTA Petition at 5-7, 10-14. While PCIA supported DFA protection for 900 MHz systems constructed within the DFA, PCIA did not intend to exclude interference protection for 900 MHz systems constructed outside of the DFA on a secondary basis which are now being afforded primary protection. The 22 dB μ contours of such systems should be protected - consistent with the Commission's current co-channel protection rules.

⁵AMTA Petition at 24; PageNet Petition at 10.

⁶PageNet Petition at 3.

III. OTHER ISSUES RAISED BY COMMENTERS, PARTICULARLY THE REGULATION OF SMR PROVIDERS SHOULD BE RECONSIDERED

Numerous parties have raised additional issues which should be reconsidered by the Commission. E.F. Johnson Company ("E.F. Johnson") and AMTA request reconsideration of the Commission's finding that the SMR service is similar to other CMRS services and therefore should be similarly regulated.⁷

In its original Comments in this proceeding, NABER stated that the designation of "comparable" services was not as important as the impact of the actual rules ultimately adopted by the Commission. NABER believed it was important that the Commission thoroughly consider the history of each service, with an emphasis on the assignment mechanisms used, to ensure that the new rules adopted did not have a negative impact on the thriving services which the Commission wanted to make more "competitive". However, the Commission's ultimate decisions in the Third Report and Order to auction already-assigned spectrum and eliminate conditional licensing, as well as the Commission's proposal in PR Docket No. 93-144 (wide-area 800 MHz SMR licensing) mandate the type of reconsideration of "comparable services" discussed in E.F. Johnson and AMTA's Petitions. The reconsideration is particularly appropriate in light of the Department of Justice's recently expressed views of comparable CMRS services.⁸

⁷E.F. Johnson Petition at 6; AMTA Petition at 4.

⁸See, United States of America v. Motorola, Inc., Final Judgment No. 94-2331, 59 FR 55705, (D.C. Dist. Ct. 1994).

IV. THE COMMISSION'S NEW RULES UNFAIRLY AND UNNECESSARILY BURDEN FORMER PRIVATE RADIO LICENSEES

AMTA's Petition raises other issues which PCIA believes merit Commission review. They include: (1) clarification of the requirement for filing Part 90 applications on microfiche;⁹ (2) adoption of a Part 90 rule specifying the Petition to Deny and Public Notice requirements;¹⁰ (3) clarification that a modification would not be considered an initial application if the applicant can demonstrate no expansion of the system's 22 dBμ interference contour;¹¹ (4) codification of the Commission's long standing policy to permit unbuilt stations to be transferred if the transfer is an incidental part of the transfer of an ongoing business;¹² and (5) clarification that Part 90 fees still apply.¹³

McCaw Cellular Communications, Inc. ("McCaw") requests reconsideration of the Commission's decision not to conform the antenna height/ERP standards of cellular providers and SMR systems. Earlier in this proceeding, NABER opposed the further restriction of SMR height and power levels but did not oppose the relaxation of similar cellular rules. That position has not changed. In the Part 90 services, SMR Pool channels are utilized by licensees who desire to use a frequency reuse design as well as licensees who

⁹AMTA Petition at 18.

¹⁰AMTA Petition at 20.

¹¹AMTA Petition at 22.

¹²AMTA Petition at 25.

¹³AMTA Petition at 19.

utilize a single transmitter site. Single site licensees must continue to have the ability to use the appropriate height and power to serve their customers. Moreover, frequency reuse systems are faced with situations where, because of co-channel licensees, not all of the channels in the system's authorization may be used in the reuse pattern. Unlike the cellular services, wide-area licensees have to contend with a chaotic pattern of co-channel licensees which dictates that different channels must be used in different configurations. Therefore, it is impossible to set an arbitrarily low height and power maximum which does not reflect the reality of the assignment pattern in the service.

Reduction in SMR power/height levels for SMR systems would devastate the industry for no reason. McCaw, in its reconsideration request, does not suggest that any benefit is to be derived from further restriction of SMR height and power levels. Therefore, PCIA continues its opposition to any change in SMR maximum power and antenna height levels.

V. CONCLUSION

WHEREFORE, the premises considered, the Personal Communications Industries Association respectfully requests that the Commission reconsider rules and regulations as suggested by PCIA, AMTA and E.F. Johnson, and make no reduction in the maximum antenna height and effective radiated power for Specialized Mobile Radio systems.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 20th day of January, 1995 sent via first class mail, postage prepaid, a copy of the foregoing Comments to the following:

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